

EXHIBIT 14

1 ADAM N. BARASCH (State Bar No. 158220)
THOMAS N. ABBOTT (State Bar No. 245568)
2 JOHN B. SULLIVAN (State Bar No. 96742)
SEVERSON & WERSON
3 A Professional Corporation
One Embarcadero Center, Suite 2600
4 San Francisco, California 94111
Telephone: (415) 398-3344
5 Facsimile: (415) 956-0439
anb@severson.com

6 Attorneys for Movant
7 GMAC Mortgage, LLC f/k/a GMAC Mortgage
Corporation

8
9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 In re

Case No. 12-33117

13 MARC JASON ANIEL,

Chapter 11

14 Debtor.

R.S. No.: ANB-1358

15 GMAC MORTGAGE, LLC f/k/a GMAC
MORTGAGE CORPORATION,
16 Movant,

**GMAC MORTGAGE, LLC f/k/a GMAC
MORTGAGE CORPORATION'S
MOTION FOR RELIEF FROM THE
AUTOMATIC STAY**

17 vs.

Date: December 13, 2012
Time: 9:30 AM
Judge: Hon. Dennis Montali
18 Crtrm.: 235 Pine Street
Courtroom 22
19 San Francisco, CA 94104

18 MARC JASON ANIEL,
19 Respondent.

21 GMAC Mortgage, LLC f/k/a GMAC Mortgage Corporation (hereinafter "Movant") hereby
22 moves this Court for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause on
23 the grounds that Movant's interest in the real property located at 75 Tobin Clark Drive,
24 Hillsborough, CA 94010 ("real property") is not adequately protected. Furthermore, Marc Jason
25 Aniel ("Debtor") has filed this bankruptcy to forestall Movant's foreclosure sale of the real
26 property. Debtor is not the borrower under the Note, nor a party to the loan. The borrower is
27 Erlinda Aniel.
28

1 Movant also seeks relief pursuant to 11 U.S.C. § 362(d)(2) on the grounds that there is no
2 equity in the real property for the Debtor or the estate, and the real property is not necessary for
3 the Debtor's effective reorganization.

4 This motion is brought pursuant to Local Bankruptcy Rule 4001-4 of the Local Rules of
5 Practice for the United States Bankruptcy Court, Northern District of California and is supported
6 by the concurrently filed notice and declaration, as well as all other papers and pleadings on file in
7 the Debtor's bankruptcy case, and such other evidence as may be filed prior to, or presented at, the
8 hearing(s) in this matter.

9 **STATEMENT OF FACTS**

10 The factual allegations herein are supported by the concurrently filed declaration of Peter
11 Knapp ("Knapp declaration").

12 On June 4, 2007, Erlinda Aniel (hereinafter "Borrower") signed a Promissory Note
13 ("Note") in the original principal amount of \$2,000,000.00 in favor of MortgageIt, Inc.
14 ("Originator"). Pursuant to the terms of the Note, Borrower was to make monthly payments until
15 the Note maturity date. The Note also provides that Borrower will pay collection costs, including
16 reasonable attorneys' fees and court costs. A copy of the Note is attached to the Knapp
17 declaration as Exhibit A and is incorporated herein by reference.

18 As security for the obligations under the Note, Borrower conveyed to Originator a Deed of
19 Trust on real property commonly known as 75 Tobin Clark Drive, Hillsborough, California 94010
20 ("real property"). Per the Deed of Trust, "Fermin Aniel and Erlinda Aniel, Husband and Wife and
21 Marc Jason Aniel, a single man," ("Debtor") are listed as "all joint tenants" and are all signatories
22 to the Deed of Trust. A copy of the Deed of Trust is attached to the Knapp declaration as Exhibit
23 B and is incorporated herein by reference. The Deed of Trust was assigned from MortgageIt, Inc.
24 to HSBC Bank USA, National Association as Trustee for DALT 2007-OA5. A copy of this
25 assignment is attached to the declaration of Knapp as Exhibit C and is incorporated herein by
26 reference. On February 1, 2011, the Deed of Trust was subsequently assigned to Movant. A
27 copy of this assignment is attached to the Knapp declaration as Exhibit D, and is incorporated
28 herein by reference.

1 Borrower, Erlinda Aniel, has previously filed for bankruptcy. On February 25, 2009,
2 Borrower and Fermin Solis Aniel filed for Chapter 11 relief in the United States Bankruptcy
3 Court, Northern District of California, San Francisco Division, Case Number 09-30452. This
4 bankruptcy case was later converted to a Chapter 7 on August 2, 2010. On December 2, 2010,
5 Borrower and Fermin Aniel received a discharge, and on February 4, 2011, the bankruptcy case
6 was closed. A copy of the bankruptcy docket report for Borrower's prior bankruptcy case is
7 attached to the Knapp declaration as Exhibit E and is incorporated herein by reference.

8 On April 27, 2012, Movant caused a Notice of Default and Election to Sell ("Notice of
9 Default") to be recorded, initiating foreclosure of the Deed of Trust. A copy of the Notice of
10 Default is attached to the Knapp declaration as Exhibit F and is incorporated herein by reference.

11 On August 1, 2012 Movant caused a Notice of Trustee's Sale to be published and
12 recorded, and a foreclosure sale was set for August 27, 2012. A copy of the Notice of Trustee's
13 Sale is attached to the Knapp declaration as Exhibit G and is incorporated herein by reference.

14 On August 9, 2012, Borrower, Erlinda Aniel, Fermin Aniel, and Debtor, or collectively
15 "the Aniels," filed a civil complaint against GMAC Mortgage, LLC, in the United States District
16 Court, Northern District of California, Oakland Division, case number 4:12-cv-04201-SBA. In
17 their complaint, they alleged nine claims for relief in connection with the pending foreclosure of
18 the real property located at 75 Tobin Clark Drive, Hillsborough, California 94010. On August 15,
19 2012, the Aniels filed an Ex Parte Application for Temporary Restraining Order and Order to
20 Show Cause ("TRO Application") seeking an order to enjoin the Trustee's Sale of the real
21 property. On September 26, 2012 the District Court entered an Order Denying the Aniels' TRO
22 Application. In response, the Aniels filed a Motion for Reconsideration on the Order on the TRO
23 Application ("Motion for Reconsideration") on October 4, 2012. On October 30, 2012, the
24 District Court entered an Amended Order Denying the Aniels' Ex Parte TRO Application. A copy
25 of the Amended Order Denying the Ex Parte TRO Application is attached to Knapp declaration as
26 Exhibit H and is incorporated herein by reference. On November 2, 2012, the Aniels' Motion for
27 Reconsideration was denied.

28 Following the entry of the Amended Order Denying the Aniels' Ex Parte TRO

1 Application, Debtor, Marc Aniel, filed this instant bankruptcy case on November 1, 2012.

2 As of November 1, 2012, Movant is owed \$2,887,367.46 which is based on the principal
3 amount, late fees, default interest, and collection costs and fees. A true and correct copy of the
4 payoff statement, with personal identifying information redacted, is attached to the Knapp
5 declaration as Exhibit I and is incorporated herein by reference.

6 **ARGUMENT**

7 **Movant Is Entitled To Relief From The Automatic Stay For Cause, Including Lack
8 Of Adequate Protection**

9 Movant is entitled to relief from stay for cause, due to lack of adequate protection. 11
10 U.S.C. §362(d)(1). A debtor's failure to repay this loan in full as per the terms of the agreement is
11 "cause" for granting relief from the automatic stay. *In re Ellis* 60 B.R. 435 (9th Cir. BAP 1985).
12 See also *In re Elmore* 94 B.R. 670 (Bankr. C.D. Cal 1988). However, Debtor is not the borrower
13 under the Note, and thus is not a party to the loan. The borrower is Erlinda Aniel.

14 There have been no payments made on this Loan since June 17, 2008. This account is due
15 for the July 2008 payment.

16 In addition, Movant is not receiving adequate protection to which it is entitled. Therefore,
17 Movant is entitled to relief from stay for cause due to lack of adequate protection under 11 U.S.C.
18 §362(d)(1).

19 **Movant Is Entitled To Relief From The Automatic Stay Because There Is No Equity
20 In The Real Property For The Estate Of The Debtor And The Real Property Is Not
21 Necessary For An Effective Reorganization**

22 Movant is also entitled to relief from stay for lack of equity. 11 U.S.C. §362(d)(2).

23 The encumbrances against the property total approximately \$2,887,367.46. Pursuant to
24 Debtor's Schedule A, Debtor values the property at \$525,000.00. A copy of Debtor's Schedule A
25 is attached to the Knapp declaration as Exhibit J and is incorporated herein by reference.

26 Given the lack of equity in this property, Movant is entitled to relief from the automatic
27 stay under §362(d)(2) unless the debtor shoulders the burden of establishing that the property is
28 necessary for effective reorganization. The issue then becomes whether there is a reasonable
possibility of a successful reorganization within a reasonable time. *In re Bonner Mall*

1 *Partnership*, 2 F.3d 899, 902 (9th Cir. 1993). This requires, "not merely a showing that if there is
2 conceivably to be an effective reorganization, this property will be needed for it; but that the
3 property is essential for an effective reorganization that is in prospect." *United Svgs. Ass'n of*
4 *Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-376, 108 S.Ct. 626, 632-
5 633 (1988). Property is not necessary to an effective reorganization if there is no reasonable
6 likelihood the debtor can be successfully reorganized. *In re Albany Partners, Ltd.*, 749 F.2d 670,
7 673 (11th Cir. 1984). Debtor bears the burden of proof that such a reorganization is in prospect.
8 11 U.S.C. §362(g)(2).

9 Any prospect for reorganization hinges on the Debtor's ability to either obtain post-petition
10 financing or to sell the subject property. Here, as mentioned above, Debtor is not the borrower
11 under the Note, nor a party to the loan. Because Debtor is not the borrower, there is no reasonable
12 likelihood of reorganization, and the property is not necessary to an effective reorganization.

13 CONCLUSION

14 For the reasons set forth above, Movant respectfully requests that this Court:

- 15 A. Grant Movant, its agents, assigns, employees, and successors in
16 interest immediate relief from the automatic stay authorizing their right to seek all remedies under
17 applicable non-bankruptcy law pursuant to the Note and Deed of Trust, including but not limited
18 to foreclosing upon and obtaining possession of the subject real property;
- 19 B. Waive the fourteen (14) day waiting period under Bankruptcy Rule 4001(a)(3);
- 20 C. Award Movant its reasonable attorney's fee and costs incurred in
21 bringing this motion; and
- 22 D. For such other and further relief as this Court deems necessary and proper.
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1 DATED: November 29, 2012

SEVERSON & WERSON
A Professional Corporation

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4 By: /s/ Adam N. Barasch
Adam N. Barasch

5
6 Attorneys for Movant
7 GMAC Mortgage LLC f/k/a GMAC Mortgage
Corporation
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